THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.17114 of 1994 and 16745 of 1995

Dated: 24-02-2006

W.P.No.17114 of 1994

Between:

M.V.Siva Reddy. .. **PETITIONER**

AND

The Vice-Chancellor,

Sri Krishnadevaraya University and others.

.. RESPONDENTS

W.P.No.16745 of 1995

Between:

D.Adinarayana. .. **PETITIONER**

AND

Sri Krishnadevaraya University and another.

.. RESPONDENTS

COMMON ORDER:

W.P.No.17114 of 94 is filed questioning the action of the second respondent in placing the petitioner at Sl.No.3 in the seniority list published in proceedings dated 20-10-1990, as arbitrary and illegal and a consequential direction is sought to R-1 and R-2 to fix the seniority of petitioner at Sl.No.1 in the cadre of Senior Assistant and to promote him to the sanctioned post of Superintendent in the Hostel Establishment strictly on the basis of seniority.

The petitioner was appointed as a Store Keeper on 01-04-1982 in Yamuna Hostel of S.K.University on consolidated pay, the 3rd respondent was appointed as a Steward of Ganga Hostel on consolidated pay and was promoted as Store Keeper on 08-02-1983, and the 4th respondent was appointed as an Attender in the year 1979 in Krishna Hostel on consolidated pay and was promoted as Store-keeper in the year 1984. The petitioner and respondents 3 and 4 were all absorbed by the University, vide proceedings, dated 27-04-1984. In the absorption order, while the petitioner was placed at Sl.No.2, respondents 3 and 4 were placed at Sl.Nos.3 and 4 respectively. Clause 3 of the said proceedings, dated 27-04-1984, provides that the service rendered by those employees under Hostel Establishment prior to 01-04-1984 would not count for University Service. Clause 6 provides that the Hostel staff are liable for transfer from one Hostel to another. Clause 7 provides that the absorbed Hostel staff shall be treated as a separate Unit for all purposes.

Subsequently, by proceedings dated 18-09-1987, the services of the petitioner and respondents 3 and 4, who were placed on probation for a period of two years, were declared to have been satisfactorily completed and they were confirmed in the post of Store-Keeper. In the said proceedings dated 18-09-1987 also, while the petitioner was shown at Sl.No.2, respondents 3 and 4 were shown at Sl.Nos.3 and 4 respectively. The second respondent issued proceedings, dated 20-10-1990, promoting the petitioner and respondents 3 and 4 as Senior Assistants in the scale of pay of Rs.1100-2050. Though the said proceedings, dated 20-10-1990, declares that the seniority of the promotes will be fixed later, the petitioner is aggrieved by the fact that while he was shown ahead of respondents 3 and 4 in the earlier proceedings dated 27-04-1984 and 18-09-1987, he was shown at Sl.No.3 in the proceedings dated 20-10-1990, whereas respondents 3 and 4 were shown at Sl.Nos.1 and 2 respectively.

During the pendency of this writ petition, the 4th respondent Sri N.Narasimha Reddy, was promoted as Superintendent on 30-05-1995. Aggrieved thereby, the 3rd respondent herein filed W.P.No.16745 of 1995 seeking a direction to the first respondent to consider and appoint him as Superintendent in preference to Sri N.Narasimha Reddy.

The 3rd respondent (D.Adinarayana) would contend that he joined service on 27-04-1979 as a Steward and was promoted as a Store Keeper on 08-02-1983, whereas Sri. N.Narasimha Reddy, who was appointed as an attendar subsequent to the petitioner, was promoted prior to him. The 3rd respondent would contend that his seniority and service in the University Hostel Establishment, prior to 01-04-1984, should also be taken into consideration and on the basis of the said seniority, he was entitled to be promoted as Superintendent in preference to the 2nd respondent.

Sri A.Bhaskara Chari, learned counsel for the petitioner in W.P.No.17114 of 1994, would contend that the very fact that the petitioner was shown ahead of respondents 3 and 4, both in the proceedings dated 27-04-1984 and 18-09-1987, would show that the petitioner was accepted as being senior to respondents 3 and 4. Learned counsel would refer to the proceedings dated 20-10-1990, wherein it was specifically stated that future promotions would be effected provided the employees satisfy the qualifications and other conditions as required under the Non-Teaching Service Rules, 1986 being issued to them separately. Learned counsel would submit that though the proceedings dated 20-10-1990 records that the seniority of the promotees would be fixed later and that the conditions of service would be governed by Non-Teaching Services Rules, 1986, the University has not finalized the seniority list till date nor have the said Services Rules been issued to the Hostel Employees. Learned counsel would contend that in the absence of any Rules, seniority should alone be the basis for effecting promotions to higher posts. He would also submit that it is not open to the respondents to apply rules which govern the conditions of services of employees of the University to employees of the hostel, since the nature of functions, job entrusted and carried out by employees of the University would differ widely from those working in hostels.

Sri K.Venkat Rao, learned counsel for the petitioner in W.P.No.16745 of 1995, (3rd respondent in W.P.No. 17114 of 1994), would submit that since Sri D.Adinaryana was appointed temporarily in the year 1979 much prior to N.Narasimha Reddy and that too in the higher post of steward as compared to Sri N.Narasimha Reddy, who was appointed as an attender, it was he, who should have been appointed first as a Superintendent and not Sri N.Narasimha Reddy. While reiterating the submissions made by Sri A.Bhaskarachari, Sri K.Venkat Rao, would also submit that the petitioner in W.P.No.16745 of 1995 is a graduate when compared to Sri Siva Reddy (petitioner in W.P.No.17114 of 1994) who had merely

passed 10th class.

Insofar as the contention of Sri K.Venkat Rao, learned counsel for the petitioner, that pre-absorption service is also required to be taken into consideration for determining seniority, perusal of the absorption proceedings, dated 27-04-1984, would negative this contention. Clause 3 specifically provides that the service rendered by hostel employees prior to 01-04-1984 would not count for University service. The proceedings, dated 27-04-1984, are not under challenge in either of the writ petitions and in fact both the petitioner and respondents 3 and 4 have acted thereupon and have acquiesced to their absorption, their probation was declared on 10-09-1987 and they were promoted to the next higher post of Senior Assistant vide proceedings, dated 20-10-1990. In the face of a specific stipulation in the order of absorption that service rendered prior to 01-04-1984 would not be reckoned, it is not open for either of the petitioners in W.P.Nos.17114 of 1994 and W.P.No.16745 of 1995 to contend that the said period of service must also be taken into consideration for determining seniority.

As pointed out by Sri A.Bhaskara Chari, learned counsel for the petitioner, the University has not finalized the seniority list which fact is not disputed by the learned Standing Counsel. It would undoubtedly have been desirable for the University to have finalized the seniority list of Senior Assistants and to have prescribed specific Rules governing promotion of employees working as Senior Assistants in the hostel to the next higher post of Superintendent. While the counter affidavit refers to the fact that the University had appended the Non-Teaching Service Rules, 1986, and that the cadre rules approved by the University in the year 1992 was also circulated among hostel employees by the Principal of the college, there is nothing on record to establish that the services of hostel employees had been merged with the service of University employees or that the service rules governing University employees

were extended to hostel employees also. It is specifically stated in the counter affidavit that the 4th respondent possessed the qualification of B.Com., M.A., English Lower Typewriting, Accounts Test for Subordinate Officers Part-I and Part-II, which are the qualifications prescribed for appointment to the post of Superintendent in the University whereas the petitioner in W.P.No.17114 of 1994 has merely passed 10th class and Sri D.Adinarayana, the petitioner in W.P.No.16745 of 1995, does not possess the qualification of typewriting in English. Sri K.Venkat Rao, learned counsel appearing on behalf of Sri D.Adinarayana, would refer to the Non-Teaching Service Rules, 1986, to contend that while the qualifications prescribed for appointment to the post of Superintendent is as stated by the respondents in the counter affidavit, Rule 6 thereof specifically provides that for existing Senior Assistants and above cadres, passing of typewriting for promotion to higher cadres may be relaxed. Mere absence of Statutory Rules would not disentitle the University from effecting promotions. The fact that similar rules applicable to University employees has been made the basis for appointment to the post of Superintendent in the hostel cannot be faulted. The fact remains that while

Sri N.Narasimha Reddy possessed all the qualifications prescribed for appointment to the post of a Superintendent in the University prior to his appointment as a Superintendent in the hostel,

Sri D.Adinarayana, did not possess the Typewriting qualification. Rule 6, which enables the University to relax the requirement of passing the typewriting test for promotion to higher cadres is a matter for the University in its discretion to decide and cannot be claimed as a matter of right. Since Sri N.Narasimha Reddy possessed the requisite qualifications, the action of the respondents in promoting him as Superintendent, in preference to both the petitioners in W.P.No.17114 of 1994 and W.P.No.16745 of 1995, who did not possess the qualifications, cannot be said to be illegal. The contention that the Service Rules applicable to the University staff should not automatically be made applicable to hostel employees since the

nature of functions differ, is a contention which is required only to be noted to be rejected. While the nature of functions of University employees may differ from that of the hostel staff, there is no prohibition in extending similar service conditions to employees of the hostel staff also and even if the said rules are presumed as not having been extended, effecting promotions to higher posts in favour of a candidate, who admittedly possessed higher qualification as compared to other candidates, cannot be said to be illegal. The scope of judicial review in these matters is limited and it is only if the respondents have acted arbitrarily or have effected promotions for extraneous reasons would interference of this court, under Article 226 of the Constitution of India, be called for. The fact that a person with better qualifications has been promoted to the higher post of Superintendent would not justify interference of this Court under Article 226 of the Constitution of India.

The grievance of the petitioners as canvassed by Sri A.Bhaskara Chari that the seniority list of Senior Assistants has not yet been finalized by the University is undoubtedly justified. The respondents are, therefore, directed to finalise the seniority list, after inviting objections from all persons concerned, as expeditiously as possible in any event not later than three months from the date of receipt of a copy of this order.

Subject to the aforesaid observations, both the writ petitions are dismissed. No order as to costs.

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24-02-2006

Prv